

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 3045 OF 2024

IN

EXECUTION APPLICATION NO. 88 OF 2008

Pushpaben Bhavanji Ganatra & Ors.

...Applicants / Org.
Respondent Nos. 1, 3
and 4 / Award Creditors

In the matter between

Mathuradas Gokuldas Ganatra & Ors.

...Claimants / Award
Debtors

Versus

Pushpaben Bhavanji Ganatra & Ors.

...Respondents/ Award
Creditors

Mr. Gaurang Mehta a/w Ms. Rea Mehta i/by Apurva Mehta for the
Applicants / Respondents.

Mr. Abhisekh Tripathi for the Claimants.

Ms. Rucha Ambekar for the Court Receiver present.

CORAM : R.I. CHAGLA J

DATE : 15 April 2025

ORDER :

1. By this Interim Application, the Applicants are seeking

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recall of the common order dated 10th September 2018 (to the extent it is made applicable to the above Execution Application No. 88 of 2008) and to restore the said Execution Application No. 88 of 2008 to file to be reflected by the Office of the Prothonotary & Senior Master as a pending Execution Application (on the file of this Court).

2. The Applicants have in the Interim Application referred to the events after the filing of the Execution Application in the year 2008 for execution of the Arbitral Award dated 9th December 2005 passed by the Sole Arbitral in terms of the Consent Terms dated 11th November 2005 signed by the parties (“**the subject Award**”).

3. The Applicants have stated that in the Execution Application, the Applicants had complied with their obligations under the subject Award and made payment of Rs. 75,00,000/- along with interest in terms of clause 3 of the Consent Terms, in installments, upto July, 2007. However, the Award Debtors failed to comply with their obligations under the subject Award and accordingly, the Execution Application has been filed in March 2008 for enforcement of the subject Award.

4. A Notice under Order XXI Rule 22 of the Code of Civil Procedure, 1908 had been issued in April 2008 and was made absolute by an order dated 16th April 2009 passed by this Court, thus permitting the execution to proceed.

5. The Award Debtors had acknowledged receipt of the sum of Rs. 75,00,000/- and had raised a dispute regarding the payment of interest by the Applicants in accordance with Clause 3 of the Consent Terms. Thereafter, by an order passed by this Court on 10th January 2011 in the 2009 Notice, this Court directed the Applicants to deposit a sum of Rs. 9,00,605/- on or before 24th March 2011 and the Prothonotary & Senior Master was directed to invest the same for a short period in a Fixed Deposit in a nationalised bank.

6. Thereafter, an order dated 28th March 2011 passed in the proceedings of the 2009 Notice, this Court had recorded that the Applicants have made deposit of the sum of Rs. 9,00,605/- and directed the Award Debtors to carry out their obligations under the subject Award on or before 2nd May 2011 and adjourned the matter to 3rd May 2011. A subsequent order dated 23rd January 2012 came to be passed by this Court, by which the Applicants were directed to

deposit an additional sum of Rs. 4,88,774/- in compliance of their obligations under Clause 3 of the Consent Terms, in Court within 30 days from the date of the said order, pursuant to which the Award debtors were directed to comply with their obligations under the subject Award.

7. The Applicants have pursuant to the order dated 23rd January 2012 deposited a further sum of Rs. 4,88,774/- in the Registry of this Court. In view of the Award Debtors again failing to comply with their remaining obligations under the subject Award, the Applicants were compelled to file Chamber Summons No. 839 of 2014 in the Execution Application for an order and direction of this Court directing the Prothonotary & Senior Master or any other officer deputed by the Prothonotary & Senior Master to sign, seal and execute the documents being the three Deeds of Retirement in favour of the Applicants and to get the same registered with the Registrar of Firms having their office at Bandra, Mumbai.

8. The Applicants have stated that thereafter, Chamber Summons No. 839 of 2014 never appeared on board for hearing of this Court.

9. The Applicants have further stated that after service of the Chamber Summons had been effected on the Award Debtors, the Applicants had occasionally followed up with their former Advocate about the status of the hearing of the Chamber Summons. The Applicants had been informed that the same would come up for hearing in due course. The Applicants have also referred to the website of this Court as generated in July 2024, which has shown the status of the Execution Application and the Chamber Summons as “pre-admission” indicating the pendency of both these matters before this Court.

10. The Applicants have referred to the Covid pandemic that intervened in March 2020, which resulted in closure of Courts for certain period of time and impacted on listing and hearings of the matters. The said Chamber Summons had not come up for hearing and upon following up with the Applicants’ erstwhile Advocate, the Applicant was informed that the Chamber Summons would list for hearing in due course, but application would be required to be made for early hearing. However, it appears that the erstwhile Advocate took no steps and the said Chamber Summons did not list for hearing.

11. The Applicants have referred to the fact that the present Advocates used the OnLine portal of this Court to efile the Vakalatnama on 20th March 2024. There were efilings objections raised by the efilings Section of the Registry of this Court indicating that the case was disposed of. The defect was raised on 28th March 2024 and was later made known by the present Advocates to the Applicants.

12. The Applicants after becoming aware of the fact that the Registry of this Court had reported the above Execution Application as a disposed of proceeding, made necessary enquiries through their present Advocates as to the correct position relating to the pendency of the above Execution Application and the said Chamber Summons.

13. Upon making the necessary enquiries with the Execution Department of the Office of the Prothonotary & Senior Master of this Court, in or about June, 2024, the Applicants' present Advocate was advised that the status of Execution Application was shown as disposed of on account of common order dated 10th September 2018 passed by this Court in a batch of 480 Execution

Applications, which came to be listed together for dismissal and a blanket common order had been passed.

14. The said common order categorised the various Execution Applications in the following manner : (i) Execution Applications wherein office objections were not removed. For such category, the said order directed removal of office objections on or before 5th October 2018; (ii) Execution Applications which have been numbered, but where no steps were taken in execution. For such category, the parties were given time to move the Registry to take further steps in execution; (iii) Execution Applications wherein a Decree has been satisfied in any manner in full or in part. For such category, time was extended till 5th October 2018 for getting the Decree marked satisfied appropriately.

15. The Applicants have stated that they became aware of the said common order dated 10th September 2018 for the first time in June 2024, when they were apprised of the same by their present Advocate. It is further stated that a perusal of the said common order dated 10th September 2018 reflected that the Execution Application did not fall in any of the three categories

contemplated therein and that the Execution Application had been incorrectly and erroneously tagged for listing for dismissal along with the remaining 479 Execution Applications.

16. Accordingly, the present Interim Application has been taken out for recall of the said common order dated 10th September 2018 and for restoring the Execution Application along with the said Chamber Summons.

17. Mr. Gaurang Mehta, the learned Counsel for the Applicants states that the Interim Application has provided the reasons for the Applicants not having moved the said Chamber Summons, which had been filed in the year 2014. The Applicants were unaware of the said common order dated 10th September 2018, when it was passed and only when they became aware in June 2024, after their present Advocates who had come on record made inquiries as to the correct position of the said Execution Application and the Chamber Summons upon having learnt that the case had been disposed of.

18. Mr. Mehta has referred to the order dated 5th

August 2024 passed by the learned Single Judge of this Court in the said Execution Application upon oral application being made vide the praecipe dated 23rd July 2024 for listing of the said Chamber Summons. By the said order, the learned Single Judge of this Court required the Applicants to take out the present Interim Application for agitating the case and submissions recorded in the said praecipe.

19. Mr. Mehta has submitted that the Execution Application had been wrongly dismissed under Rule 329 of the Bombay High Court (O.S.) Rules, which provide for the rejection of the Execution Application on the ground of non prosecution for a period of 12 months since its filing.

20. Mr. Mehta has submitted that the Applicants have diligently proceeded with the Execution Application upon its filing by getting it numbered. Further, he has referred to the Notice issued under Order XXI Rule 22 of the Code of Civil Procedure, 1908 on 1st April 2008, which also was mentioned on the cause list of 10th September 2018, when the matter had appeared and was dismissed.

21. Mr. Mehta has submitted that the various steps

taken in the Execution Application referred to above, were lost sight of by the learned Single Judge of this Court in passing the said common order dated 10th September 2018 rejecting the Execution Application under the said Rule. He has submitted that the Execution Application does not fall within any of the aforementioned three categories, which this Court considered in passing the said common order. He has submitted that the fact of filing of the Chamber Summons was also lost sight of by the learned Single Judge of this Court, as the said common order was passed in the absence of the Applicants.

22. Mr. Mehta has accordingly, sought for recall of the said common order dated 10th September 2018 to the extent that it dismisses the Execution Application No. 88 of 2008 filed by the Applicants.

23. Mr. Abhisekh Tripathi, the learned Counsel for the Respondents has tendered Affidavit in Reply dated 3rd March 2025, which is taken on record. He has submitted that there are no proper explanation as to why the Applicants failed to proceed with the Chamber Summons in the above Execution Application. He has

submitted that the discretionary common order passed by the learned Single Judge of this Court under Rule 329 of the Bombay High Court (O.S.) Rules ought not to be interfered with particularly, considering that the discretion vests with the Chamber Judge and where the Chamber Judge has considered that the Execution Application has not been proceeded with diligently, the Chamber Judge is entitled to reject the Execution Application. He has submitted that there is no diligence shown by the Applicants in the present case.

24. Having considered the submissions, in my view, the Applicants have proceeded with the Execution Application after its filing in March 2008. Notice under Order XXI Rule 22 of the Code of Civil Procedure, 1908 had been issued in April 2008 and which was reflected in the cause list, when the impugned common order dated 10th September 2018 had been passed. Thus, there is an error in passing of the impugned common order dated 10th September 2018 rejecting the Execution Application under Rule 329 of the Bombay High Court (O.S.) Rules. The learned Single Judge of this Court in passing the said common order has lost sight of the said Chamber Summons which was filed by the Applicants.

25. Although, mention is made in the Interim Application of the events relating to the execution proceedings seeking enforcement of the Arbitral Award dated 9th December 2005 in terms of the Consent Terms dated 11th November 2005, there is no proper explanation as to why the Applicants have not moved the said Chamber Summons No. 839 of 2014 after its filing, other than stating that it did not appear on the board for hearing before this Court. This goes to show that neither the Applicants nor their erstwhile Advocates took steps for listing the said Chamber Summons on board.

26. Accordingly, I find it appropriate to impose costs on the Applicants in the sum of Rs. 20,000/-, which is payable to a Charitable Institute, the details of which are provided herein below and subject to which there shall be recall of the said common order dated 10th September 2018 to the extent that it dismissed Execution Application No. 88 of 2008 and Chamber Summons No. 839 of 2014 taken out therein.

27. Hence, the following order is passed.:-

- (i) The impugned common order dated 10th September 2018 passed by this Court is recalled.
- (ii) Execution Application No. 88 of 2008 along with the Chamber Summons No. 839 of 2014 is restored to file of the Court, subject to payment of costs of Rs. 20,000/- (Rupees Twenty Thousand only), payable by the Applicants to Deeds for Needs Foundation, Row No. C/4, Clover Highlands, Kondhwa, SN. 25/1 to 4, NIBM Road, Pune – 411048, within a period of two weeks from the date of this order.
- (iii) The Interim Application is accordingly, disposed of.
- (iv) There shall be no order as to costs.

[R.I. CHAGLA J.]